

Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy or prejudice to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

In this case the defendant is the United States of America. The United States is liable for injuries caused by the negligent acts of any employee of the government acting within the scope of her employment.

All parties are equal before the law. An individual is entitled to the same fair consideration that you would give to the United States of America and vice versa.

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations. A stipulation is an agreement between both sides that certain facts are true.

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers’ opening statements, interim statements and, closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, [including any party to the case], you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness’s memory;
- any interest, bias, or prejudice the witness may have;
- the witness’s intelligence;
- the manner of the witness while testifying;
- and the reasonableness of the witness’s testimony in light of all the evidence in the case.

A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded.

The deposition of Michael Scott Jehle, which was taken on September 20, 2004, is about to be presented to you. Deposition testimony is entitled to the same consideration and is to be judged, insofar as possible, in the same way as if the witness had been present to testify.

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

In considering the evidence, you may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

It is proper for a lawyer to meet with any witness in preparation for trial.

You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

You may consider statements given by Jose Arriaga or Beatrice Agyeiwaa under oath before trial as evidence of the truth of what he or she said in the earlier statements, as well as in deciding what weight to give his or her testimony here in court.

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement that is inconsistent with his testimony here in court, you may consider the earlier statement only in deciding whether the witness's testimony here in court was true and what weight to give to the witness's testimony here in court.

In considering a prior inconsistent statement, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

The parties agree that the summary of Jose Arriaga's medical bills accurately summarizes the amounts of his medical bills for medical care and treatment received arising out of the collision. You should consider these summaries just like all of the other evidence in the case.

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find,” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

When I use the word “negligence” in these instructions, I mean the failure to do something which a reasonably careful person would do, or the doing of something which a reasonably careful person would not do, under circumstances similar to those shown by the evidence. The law does not say how a reasonably careful person would act under those circumstances. That is for you to decide.

When I use the words “ordinary care,” I mean the care a reasonably careful person would use under circumstances similar to those shown by the evidence. The law does not say how a reasonably careful person would act under those circumstances. That is for you to decide.

It was the duty of the plaintiff, before and at the time of the occurrence, to use ordinary care for his own safety. A plaintiff is contributorily negligent if (1) he fails to use ordinary care for his own safety and (2) his failure to use such ordinary care is a proximate cause of the injury.

The plaintiff's contributory negligence, if any, which is 50% or less of the total proximate cause of the injury for which recovery is sought, does not bar his recovery. However, the total amount of damages to which he would otherwise be entitled is reduced in proportion to the amount of his negligence. This is known as comparative negligence.

If the plaintiff's contributory negligence is more than 50% of the total proximate cause of the injury for which recovery is sought, the defendant shall be found not liable.

It was the duty of the defendant, before and at the time of the occurrence, to use ordinary care for the safety of the plaintiff. That means it was the duty of the defendant to be free from negligence.

When I use the expression "proximate cause," I mean any cause which, in natural or probable sequence, produced the injury complained of. It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it, causes the injury.

When I use the expression "contributory negligence," I mean negligence on the part of the plaintiff that proximately contributed to cause the alleged injury.

It is the duty of every operator of a motor vehicle using a public highway to exercise ordinary care at all times to avoid placing himself, herself, or others in danger and to exercise ordinary care at all times to avoid a collision.

There was in force in the State of Illinois at the time of the occurrence in question a certain statute which provided that:

A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

If you decide that a party violated the statute on the occasion in question, then you may consider that fact gathered together with all other facts and circumstances in evidence in determining whether and to what extent, if any, a party was negligent before and at the time of the occurrence.

There was in force in the State of Illinois at the time of the occurrence in question a certain statute which provided that:

An electric turn signal device must be used to indicate an intention to change lanes. If you decide that a party violated the statute on the occasion in question, then you may consider that fact gathered together with all other facts and circumstances in evidence in determining whether and to what extent, if any, a party was negligent before and at the time of the occurrence.

There was in force in the State of Illinois at the time of the occurrence in question a certain statute which provided that:

No vehicle may be driven upon any highway of this State at a speed which is greater than is reasonable and proper with regard to traffic conditions and the use of the highway, or endangers the safety of any person or property. The fact that the speed of a vehicle does not exceed the applicable maximum speed limit does not relieve the driver from the duty to decrease speed when approaching and crossing an intersection, . . . or when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions. Speed must be decreased as may be necessary to avoid colliding with any person or vehicle on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

If you decide that a party violated the statute on the occasion in question, then you may consider that fact gathered together with all other facts and circumstances in evidence in determining whether and to what extent, if any, a party was negligent before and at the time of the occurrence.

There was in force in the State of Illinois at the time of the occurrence in question a certain statute which provided that:

The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety.

If you decide that a party violated the statute on the occasion in question, then you may consider that fact gathered together with all other facts and circumstances in evidence in determining whether and to what extent, if any, a party was negligent before and at the time of the occurrence.

There was in force in the State of Illinois at the time of the occurrence in question a certain statute which provided that:

The driver of a motor vehicle shall when reasonably necessary to insure safe operation give audible warning with his horn.

If you decide that a party violated the statute on the occasion in question, then you may consider that fact gathered together with all other facts and circumstances in evidence in determining whether and to what extent, if any, a party was negligent before and at the time of the occurrence.

The plaintiff, Mr. Jose Arriaga, claims that on October 10, 2001 he was injured, and that the defendant United States of America, acting through its agent, Ms. Akosua Agyeiwaa, was negligent in one or more of the following respects:

- Failed to stop her motor vehicle when danger was imminent so as to avoid causing a collision.
- Failed to keep a proper lookout for other vehicles in and about the area.
- Failed to give proper and adequate warning of the approach of her motor vehicle although such warning was necessary to ensure the safe operation of her motor vehicle.
- Failed to change the course of said motor vehicle so as to avoid striking another vehicle when it was necessary to avoid causing injuries to the Plaintiff.
- Failed to maintain her vehicle wholly within her lane of traffic.
- Failed to exercise due care in passing another vehicle on the right.

The plaintiff, Mr. Arriaga, further claims that one or more of the foregoing was a proximate cause of his injuries.

The defendant, United States of America, denies that its employee, Ms. Agyeiwaa, did any of the things claimed by the plaintiff, denies that Ms. Agyeiwaa was negligent in doing any of the things claimed by the plaintiff, and denies that any claimed act or omission on the part of Ms. Agyeiwaa was a proximate cause of the plaintiff's claimed injuries.

The defendant, United States of America, claims that the plaintiff, Mr. Jose Arriaga, was contributorily negligent in one or more of the following respects:

- Failed to keep a proper lookout;
- Failed to reduce speed to avoid an accident;
- Failed to reduce speed approaching an intersection;
- Operated his motor vehicle too fast for conditions;
- Following too closely;
- Failed to exercise due care in passing another vehicle on the right;
- Failed to give audible warning with his horn to ensure safe operation of a motor vehicle; and
- Failed to exercise ordinary care at all times to avoid placing himself and others in danger and to exercise ordinary care at all times to avoid a collision.

The defendant, United States of America, further claims that one or more of the foregoing was the sole proximate cause of the plaintiff's injuries.

The plaintiff denies that he did any of the things claimed by defendant, denies that he was negligent and denies that any claimed act or omission on his part was a proximate cause of his claimed injuries.

The plaintiff has the burden of proving each of the following propositions:

First, that the defendant acted or failed to act in one of the ways claimed by the plaintiff as stated to you in these instructions and that in so acting, or failing to act, the defendant was negligent.

Second, that the plaintiff was injured;

Third, that the negligence of the defendant was a proximate cause of the injury to the plaintiff.

If you find from your consideration of all the evidence that any of these propositions has not been proved, then your verdict should be for the defendant. On the other hand, if you find from your consideration of all the evidence that each of these propositions has been proved, then you must consider the defendant's claim that the plaintiff was contributorily negligent.

As to that claim, the defendant has the burden of proving both of the following propositions.

A. That the plaintiff acted or failed to act in one of the ways claimed by the defendant as stated to you in these instructions and that so acting, or failing to act, the plaintiff was negligent.

B. That the plaintiff's negligence was a proximate cause of his injury.

If you find from your consideration of all the evidence that the plaintiff has proved all the propositions required of the plaintiff and that the defendant has not proved both of the propositions required of the defendant, when your verdict should be for the plaintiff and you should award plaintiff the damages the plaintiff has proven by a preponderance of the evidence he incurred on the verdict form entitled "Verdict for Plaintiff Jose Arriaga."

If you find from your consideration of all the evidence that the defendant has proved both of the propositions required of the defendant, and if you find that plaintiff's contributory negligence was more than 50% of the total proximate cause of the injury for which recovery is sought, then your verdict will be for the defendant and none of the damages plaintiff incurred will be awarded to him. You should report that verdict on the form entitled "Verdict for the United States of America."

If you find from your consideration of all the evidence that the plaintiff has proved all the propositions required of the plaintiff and that the defendant has proved both of the propositions required of the defendant, and if you find that the plaintiff's contributory negligence was 50% or less of the total proximate cause of the injury for which recovery is sought, then your verdict should be for the plaintiff and you should state in your verdict the total amount plaintiff was damaged and the percentage of plaintiff's contributory negligence that you find. Do not reduce the damages amount by percentage you find plaintiff was contributorially negligent. I will do the math and reduce the amount of damages you find the plaintiff incurred by that percentage when I enter the court's judgment based upon your verdict.

If you decide for the defendant on the question of liability, then you should not consider the question of damages.

If you find that the plaintiff is entitled to damages arising in the future because of injuries, you must determine the amount of these damages which will arise in the future.

If these damages are of a continuing nature, you may consider how long they will continue. If these damages are permanent in nature, then in computing these damages you may consider how long the plaintiff is likely to live.

According to a table of mortality in evidence, the life expectancy of a person aged 39 years is 38.9 years. This figure is not conclusive. It is the average life expectancy of persons who have reached the age of 39. It may be considered by you in connection with other evidence relating to the probable life expectancy of the plaintiff in this case, including evidence of his occupation, health, habits, and other activities, bearing in mind that some persons live longer and some persons less than the average.

If you decide for the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate him for any of the following elements of damages proved by the evidence to have resulted from the negligence of the defendant, taking into consideration the nature, extent and duration of the injury.

- The disfigurement resulting from the injury.
- Loss of a normal life experienced and reasonably certain to be experienced in the future. When I use the expression “loss of a normal life,” I mean the temporary or permanent diminished ability to enjoy life. This includes a person’s inability to pursue the pleasurable aspects of life.
- The pain and suffering experienced and reasonably certain to be experienced in the future as a result of the injuries.
- The value of earnings or profits lost.
- The reasonable expense of necessary medical care, treatment, and services received and the present cash value of the reasonable medical expenses of medical care, treatment and services reasonably certain to be received in the future.

Whether any of these elements of damages has been proved by the evidence is for you to determine.

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in Court.

Forms of verdict have been prepared for your convenience. These verdict forms will be brought to you in the jury room shortly along with a copy of these jury instructions for each of you to use during your deliberations.

I will read the two alternative forms of verdict to you.

[Form of verdict read].

When you have reached a unanimous agreement on your verdict, you should select the form that accurately states your verdict. If necessary, your foreperson will accurately fill in any blanks on the form and put the date of your verdict on the form, then each of you will sign the form after checking its accuracy. You will then return with the completed verdict form to the courtroom after first informing the marshal in charge of the jury that you have reached a verdict.

It is proper to add the caution that nothing said in these instructions and nothing in any form of verdict prepared for your convenience and nothing I said during the trial is meant in any way to suggest or convey in any way or manner what verdict I think you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

Members of the jury, you are free to deliberate in any way you decide or select whomever you like as a foreperson. However, I am going to provide some general suggestions on the process to help you get started. When thinking about who should be foreperson, you may want to consider the role that the foreperson usually plays. The foreperson serving as the chairperson during the deliberations should ensure a complete discussion by all jurors who desire to speak before any vote. Each juror should have an opportunity to be heard on every issue and should be encouraged to participate. The foreperson should help facilitate the discussion and make sure everyone has an opportunity to say what they want to say.

You may, if you find it necessary during your deliberations, submit written questions to me about the case, but you should understand that the you, as the jury, must decide the facts. You should make a determined effort to answer any question by referring to the jury instructions before you submit a question to me. If you do submit a question, I must show it to the lawyers for each side and consult with them before responding. As we did during the trial, I will either answer your question, or explain why I cannot answer your question.

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without surrendering your individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges – judges of the facts. Your sole interest is to seek the truth from the evidence in the case.